Office Supreme Court, U.S.
FILED
JUL 26 1957
JOHN T. FEY, Clerk

Supreme Court of the United States

No. 281

CIVIL

M. M. MEREDITH,

Petitioner and Appellant Below,

vs.

JOHN DEERE PLOW CO. OF MOLINE, ILL., A CORPORATION,

Respondent and Appellee Below.

RESPONDENT'S BRIEF RESISTING PETITION FOR CERTIORARI

RAYMOND A. SMITH,
301-7 Park Building,
Council Bluffs, Iowa,
Attorney for Respondent.

OF COUNSEL:

ABE V. SHOTWELL,
1032-42 Omaha Natl. Bank Bldg.,
Omaha, Nebraska.

L. D. WILSON and ROBERT L. BARRETT,
1325 Third Avenue,
Moline, Illinois.

INDEX

Pages

Statement of Case 1

Summary of Points to be Argued and Authorities Relied On 2

Argument 6

Point I 6

Petitioner had his day in Court—No Constitutional Question Involved.

Point II 7

Judgments in First Suits of Meredith v. John Deere Plow Company of Moline are Res Judicata.

Point III 11

The Court May Take Judicial Notice of Record and Proceedings in First Suits.

Point IV 12

Since Substantive Law Applicable is that of Iowa—District Court and Circuit Court of Appeals Were Required to Follow the Law of that State.

Point V 14

Only in Exceptional Cases Does the Supreme Court Review Applying of Local Law by Lower Federal Courts. In such Cases Conflict Among Federal Circuit Courts Is Not of Itself a Reason for Granting a Writ of Certiorari.

Point VI 14

Circuit Court of Appeals Has Not in This Case Decided an Important Question of Fed

INDEX—Continued

	Pages
eral Law—It Was One of Applicable Substantive Law of Iowa.	
Point VII	15
Writs of Certiorari are only Granted under Special Circumstances and in Cases of General Importance.	
Appendix A	17

CASES CITED

American Viscose Corp. v. Rothensies (3 Cir.), 121 F. 2d 186, 188 ..... 3, 8

Angel v. Bullington, 330 U. S. 183, 192-193 ..... 3, 10

Aurora City v. West, 74 U. S. 82, 95-96 ..... 3, 8, 11

Brady v. Beams (10 Cir.), 132 F. 2d 985 ..... 4, 12

Busby v. Electric Utilities Employees Union, 323 U. S. 72 14

Claiborne-Reno Co. v. E. I. DuPont DeNemours & Co. (8 Cir.), 77 F. 2d 565 13

Cohen v. U. S. (8 Cir.), 129 F. 2d 733, 735, 736 ..... 4, 8

Curacao Trading Co., Inc., v. William Stake & Co., Inc. (D. C. S. D. Ia.), 89 F. Supp. 787 ..... 1, 2, 3, 6

DeBeaha v. Safe Deposit & Trust Co. of Baltimore, 233 U. S. 24, 32 ..... 4, 11

D. Del Vecchio v. Bowers, 296 U. S. 280, 285 ..... 5, 14

District of Columbia v. Pace, 320 U. S. 698, 702 ..... 5, 14

DuPont, E. I., DeNemours & Co. v. Claiborne-Reno Co. (8 Cir.), 64 F. 2d 224, Cert. denied 290 U. S. 646 13

CASES CITED—Continued

	Pages
Erie R. R. Co. v. Tompkins, 304 U. S. 64	4
Faulkner v. Des Moines Drug Co., 117 Ia. 120; 90 N. W. 585	5, 13
Goldfarb v. Wright (2 Cir.), 135 F. 2d 188, 189	4, 8
Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U. S. 251, 257, 258	6, 15
Heiser v. Woodruff, 327 U. S. 726, 735	3, 9
Kithcart v. Met. Life Ins. Co. (8 Cir.), 119 F. 2d 497	4, 12
Lee v. Federal Trade Com. (8 Cir.), 113 F. 2d 583, 585	3, 10
Lewis v. Minnesota Mutual Life Ins. Co., 240 Ia. 1249, 37 N. W. 2d 316	5, 13
Meredith v. John Deere Plow Company of Moline (D. C. S. D. Ia.), 89 F. Supp. 787	1, 2, 3, 6
Meredith v. John Deere Plow Company of Moline (8 Cir.), 185 F. 2d 481, Cert. denied 341 U. S. 936	1, 2, 3, 5, 7, 9, 11, 15
Meredith v. John Deere Plow Company of Moline (8 Cir.), 206 F. 2d 196, Cert. denied 346 U. S. 223	1, 3, 7, 9, 11
Meredith v. John Deere Plow Company of Moline 244 Fed. (2d) 9	2
National Labor Relations Board v. Pittsburgh S. S. Co., 340 U. S. 498	6, 15, 16
Northern Pac. R. R. Co. v. Slaght, 205 U. S. 122, 130-131	3, 8, 14
Painter v. Hoffman, 318 U. S. 109	5, 14
Rohlin v. N. Y. Life Ins. Co., 304 U. S. 202	5, 14

CASES CITED—Continued

	Pages
State of Ohio ex rel Scney v. Swift & Co., 260 U. S. 146	15
Terre Haute Brewing Co. v. Dugan (8 Cir.), 102 F. 2d 425	13
United States v. Mousingwear, Inc. (8 Cir.), 178 F. 2d 204, 206-209 (affirmed 339 U. S. 36)	3, 10

Supreme Court of the United States

No. 281

Civil.

M. M. MEREDITH,

Petitioner and Appellant Below,

vs.

JOHN DEERE PLOW CO. OF MOLINE, ILL., A CORPORATION,

Respondent and Appellee Below.

RESPONDENT'S BRIEF RESISTING PETITION FOR CERTIORARI

STATEMENT OF CASE

This action is an attempt on the part of the petitioner to relitigate the matters and issues adjudicated against him in the two previous cases between the same parties (*M. M. Meredith v. John Deere Plow Company of Moline*) in the United States District Court for the Southern District of Iowa, Western Division, the first case reported in 89 Fed. Supp. 787, and in the same case on appeal in the United States Circuit Court of Appeals, 8th Circuit, reported in 185 Fed. 2d 481, and in which certiorari to the Supreme Court of the United States was denied in 341 U. S. 936. The second case is reported in 206 Fed. 2d 196

(8th Cir.) certiorari denied by the Supreme Court in 346 U. S. 223.

The substance and analysis of the complaint in the first case is set out in detail in the opinion of the trial court, reported in 89 Fed. Supp. 787, 788, and pertinent portions of it in the opinion of the Circuit Court of Appeals in 185 Fed. 2d 481, 482.

A summarized resume of the prior proceedings is to be found in the decision of the trial court in the case at bar (Rec. p. 11). For the convenience of the Court, a copy of the trial court's decision is included as Appendix "A" to this brief in resistance.

Additional reference to the various proceedings had will be found in *M. M. Meredith v. John Deere Plow Company of Moline, Illinois*, 244 Fed. 2d 9, which is the opinion of the United States Court of Appeals for the Eighth Circuit in case at bar.

Respondent believes that this sufficiently sets forth the facts to enable the Court to pass upon the petition for writ of certiorari herein without further encumbering this brief in resistance with a lengthy statement of the various pleadings and proceedings.

SUMMARY OF POINTS TO BE ARGUED AND AUTHORITIES RELIED ON BY RESPONDENT

I.

The petitioner has had his day in court and there is no constitutional question involved.

M. M. Meredith v. John Deere Plow Company of Moline, 185 Fed. 2d 481, cert. denied 341 U. S. 936.

M. M. Meredith v. John Deere Plow Company of Moline, 89 Fed. Supp. 787.

M. M. Meredith v. John Deere Plow Company of Moline, 206 Fed. 2d 196, cert. denied 346 U. S. 223.

II.

The judgments in the preceding suits of *Meredith v. John Deere Plow Company of Moline* (8 Cir.), 185 Fed. Rep. 2d 481, certiorari denied, 341 U. S. 936 and *Meredith v. John Deere Plow Company of Moline*, 206 F. 2d 196, cert. denied 346 U. S. 223, are "res judicata" as to the validity and enforceability and the rights of the parties under the alleged contract sought to be pleaded by the plaintiff and petitioner in this suit.

Aurora City v. West, 74 U. S. 82, 95-96.

United States v. Munsingwear, Inc., 8 Cir., 178 F. 2d 294, 206-209 (affirmed 350 U. S. 36).

Northern Pacific Railway Co. v. Slaght, 205 U. S. 122, 130-131.

Angel v. Bullington, 330 U. S. 183, 192, 193.

Curacao Trading Co., Inc., v. William Stake & Co., Inc. (D. C. S. D. N. Y.), 61 F. Supp. 181, 184.

Heiser v. Woodruff, 327 U. S. 726, 735.

George H. Lee Co. v. Federal Trade Commission (8 Cir.), 113 F. 2d 583, 585.

Am. Viscose Corp. v. Rothensies (3 Cir.), 121 F. 2d 186, 188.

Cohen v. U. S. (8 Cir.), 129 F. 2d 733, 735, 736.

Goldfarb v. Wright (2 Cir.), 135 F. 2d 188, 189.

III.

This case and the said preceding cases of *Meredith v. John Deere Plow Company of Moline* are so closely interwoven and so clearly interdependent that the Court may take judicial notice of the records and proceedings in the preceding suits.

DeBeers v. Safe Deposit & Trust Co. of Baltimore, 233 U. S. 24, 32.

Brady v. Beams, 10 Cir., 132 F. 2d 985.

Kithcart v. Met. Life Ins. Co., 8th Cir., 119 F. 2d 497.

IV.

Since the substantive law applicable to this case is that of Iowa, the District Court and Circuit Court of Appeals were required to follow the law of that State (*Erie R. R. Co. v. Tompkins*, 304 U. S. 64), which was and is as follows:

Under Iowa law, exclusive sales agency contract, terminable at will of agent, could be terminated by either party at will without incurring liability for damages to the other party.

Where one party to a contract is not bound to perform and can not be held liable for failure of performance, there is lack of mutuality and it is unenforceable.

If mutual promises are the mutual consideration of

a contract, each promise must be enforceable in order to render the other enforceable.

Lewis v. Minnesota Mutual Life Ins. Co., 240 Ia. 1249, 37 N. W. 2d 316.

Faulkner v. Des Moines Drug Co., 167 Ia. 120, 90 N. W. 585.

V.

Only in exceptional cases does the Supreme Court review applying of local law by lower Federal Courts. As to questions controlled by State law, conflict among Federal Circuit Courts is not of itself a reason for granting a writ of certiorari.

D. Del Vecchio v. Bowers, 296 U. S. 280, 285.

Palmer v. Hoffman, 318 U. S. 109.

District of Columbia v. Pace, 320 U. S. 698, 702.

Rublin v. N. Y. Life Ins. Co., 304 U. S. 202.

VI.

The Circuit Court of Appeals has not in this case "decided an important question of Federal law which has not been, but should be, settled by this Court." The question decided was one of substantive law of Iowa applicable to this case and which the Circuit Court of Appeals was required to follow, and the law of Iowa with respect to contracts of the type of that in suit conforms to the law which is generally applicable.

Meredith v. John Deere Plow Company of Moline, 8 Cir., 185 Fed. Rep. 2d 481.

VII.

Writs of Certiorari, to review judgment of the Courts of Appeal, are only granted under special circumstances, and such jurisdiction should be sparingly exercised, and only in cases of peculiar gravity and general importance, or to secure uniformity of decisions.

Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U. S. 251, 257, 258.

State of Ohio ex rel Scheer v. Swift & Co., 260 U. S. 146.

National Labor Relations Board v. Pittsburgh S. S. Co., 340 U. S. 498.

ARGUMENT

POINT I.

The petitioner has had his day in Court and there is no constitutional question involved.

Petitioner brought his first suit for $200,000.00 damages in the District Court of Cass County, Iowa, which was removed to the United States District Court for the Southern District of Iowa, Western Division. Upon motion of the defendant (respondent) filed in the United States District Court, the cause was dismissed for the reason that the complaint failed to state a claim against the defendant upon which relief could be granted. *Meredith v. John Deere Plow Company of Moline*, 89 Fed. Supp. 787.

The petitioner did not ask leave to amend his complaint. He appealed to the United States Court of Appeals, 8th Circuit, and that Court sustained the ruling of

the District Court. *Meredith v. John Deere Plow Company of Moline*, 185 Fed. 2d, 481.

Petitioner petitioned said Circuit Court of Appeals for a rehearing, claiming the issue of estoppel had been overlooked. Said request for rehearing was denied. The petitioner then filed in this Court his petition for writ of certiorari, which was denied May 21, 1951, 341 U. S. 936.

Thereafter, the petitioner filed an equity action, for an accounting, bottomed upon the same alleged contract as was declared upon in the first case, involving the same parties. Upon motion of defendant (respondent) filed in the said United States District Court, to dismiss the complaint of the plaintiff on the ground that it failed to state a claim against the defendant, upon which relief could be granted, which was sustained, the cause was dismissed. The petitioner did not ask leave to amend his complaint. He appealed to the United States Court of Appeals, 8th Circuit, and the Circuit Court sustained the ruling of the District Court. *Meredith v. John Deere Plow Company of Moline*, 206 Fed. 2d 196. Petitioner did not ask for a rehearing but on October 8, 1953, filed in this Court his petition for writ of certiorari, which was denied. 346 U. S. 223.

POINT II.

The judgments in the preceding suits of Meredith v. John Deere Plow Company of Moline are res judicata as to the validity and enforceability, and the rights of the parties under the alleged contract sought to be pleaded by the plaintiff and petitioner in this suit.

Under Federal Rules of Civil Procedure, a motion to dismiss for failure to state a claim is the equivalent of a demurrer at common law; it admits for the purpose of the motion all well-pleaded facts of the complaint and not conclusions of either law or fact.

Caracas Trading Co., Inc., v. William Stake & Co. (S. D. N. Y.), 61 F. Supp. 181, 184.

Am. Visicot Corp. v. Rothensies (3 Cir.), 121 Fed. 2d 186, 188.

Cohen v. U. S. (8 Cir.), 129 Fed. 2d 733, 735, 736.

It is also settled that a judgment sustaining a general demurrer or motion to dismiss, based on the ground that the complaint does not state facts sufficient to constitute a cause of action, is an adjudication on the merits and bars another action on the same facts.

Aurora v. City of W. 3, 74 U. S. 82, 95-96.

No. Pac. R. Co. v. Slaght, 205 U. S. 122, 130-131.

Caracas Trading Co., Inc., v. William Stake & Co. (D. C. S. D. N. Y.), 61 F. Supp. 181, 184.

That is true not only when leave to amend is not granted, but a fortiori is granted and not availed of.

Caracas Trading Co., Inc., v. William Stake & Co., supra.

Goldfarb v. Wright (2 Cir.), 135 F. 2d 188, 189.

No. Pac. R. Co. v. Slaght, supra.

The petitioner's complaint in the case at bar shows on its face that he had and claimed the right to terminate the agreement, arrangement, understanding or association at will (R7). It contains no allegations taking the case

out from under the rule that if mutual promises are the mutual consideration of the contract, each promise must be enforceable in order to render the other enforceable. There are no facts alleged showing any separate or additional consideration. The agreement, arrangement, understanding or association which the petitioner (plaintiff) now claims in the case at bar is enforceable against the defendant (respondent) is the same as that which was the subject matter of his complaints which were dealt with in the opinions of the 8th Circuit Court of Appeals in *Meredith v. John Deere Plow Company of Moline, Illinois*, 185 F. 2d 481 (cert. denied 341 U. S. 936, also in 206 Fed. 2d 196 (cert. denied 346 U. S. 223, and the parties are identical. It was held in each of those cases that the complaint was properly dismissed because the agreement upon which the plaintiff relied was not enforceable against defendant, being terminable at will. The decision and judgment in each of those cases is res judicata as to the validity and enforceability, and the rights of the parties under the alleged contract sought to be pleaded by the plaintiff, the petitioner in this suit. The statement of this rule in the various cases will be sufficient argument in support of that proposition.

In the case of *Heiser v. Woodruff*, 327 U. S. 726, at page 735, the Court held that a Federal Court may not reject the salutary principle of res judicata which is founded upon generally recognized public policy that there must be some end to litigation and that when one appears in court to present his case, is fully heard, and contested issue is decided against him, he may not later renew the litigation in another court.

Passing upon the question the Court said:

"In general a judgment is *res judicata* not only as to all matters litigated and decided by it, but as to all relevant issues which could have been but were not raised and litigated in the suit."

The rule has been followed and adopted by the Eighth Circuit in the case of *George H. Lee v. Federal Trade Commission*, 113 Fed. 2d 583, page 585, in which the Court said:

"Where the underlying issue in two suits is the same, the adjudication of the issue in the first suit is determinative of the same issue in the second suit."

In *U. S. v. Munsingwear, Inc.*, 350 U. S. 36, 37, 39, the Court states the classic statement of the rule of res judicata as follows:

"The general principle announced in numerous cases is that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified."

In *Angel v. Bullington*, 320 U. S. 183, 192-193, it was said in the opinion:

"The doctrine of res judicata reflects the refusal of law to tolerate needless litigation. Litigation is needless if, by fair process, a controversy has once gone through the courts to conclusion. (Citing cases.) And it has gone through, if issues that were or could

have been dealt with in an earlier litigation are raised anew between the same parties."

To like effect are the holdings in *Aurora v. City of West*, 74 U. S. 82, 95-96; *No. Pac. Ry. Co. v. Slaght*, 205 U. S. 122, 130-1; *Caracao Trading Co., Inc., v. Wm. Stake & Co.* (D. C. S. D. N. Y.), 61 Fed. Supp. 181, 184, followed and approved by the Eighth Circuit Court of Appeals in its decision in the case at bar.

POINT III.

This case and the preceding cases of *Meredith v. John Deere Plow Company of Moline* (8 Cir.), 185 Fed. 2d 481, cert. denied 241 U. S. 936, and 206 Fed. 2d 196, cert. denied 346 U. S. 223, are so closely interwoven and so clearly interdependent that the Court may take judicial notice of the records and proceedings in the preceding suits.

In *DeBearn v. Safe Deposit & Trust Co. of Baltimore*, 233 U. S. 24, it was said in the opinion on page 32 of 233 U. S.:

> "We are not constrained by the limitations which the lower court considered prevented it from taking notice of the judicial proceedings in the courts of Maryland in which the attachments issued. We say this because, as was declared in Bienville Water Supply Co. v. Moline, 186 U. S. 212, 217, 46 L. Ed. 1132, 1134, 22 Sup. Ct. Rep. 820: 'We take judicial notice of our own records, and, if not *res judicata*, we may, on the principle of *stare decisis*, rightfully examine and consider the decision in the former case as affecting the consideration of this;' and again, as further declared in Dimmick v. Tompkins, 194 U. S. 540, 548, 48 L. ed. 1110, 1113, 24 Sup. Ct. Rep. 780: 'The court has the

right to examine its own records and take judicial notice thereof in regard to proceedings formerly had therein by one of the parties to the proceedings now before it." Availing of this power and making reference to the records of this Court, it appears that the controversy as to the validity of the attachments with which the appeal before us is concerned has, on three different occasions, been here considered."

This rule was recognized by the Circuit Court of Appeals for the Tenth Circuit in the case of *Brady v. Beams*, 132 Fed. 2d 985 (C. C. A. 10), in holding that the Circuit Court of Appeals can take judicial notice of the record on appeal from a judgment in a former action.

To like effect the Court of Appeals, 8th Circuit, held in the case of *Kithcart v. Metropolitan Life Insurance Company*, 119 Fed. 2d 497 (C. C. A. 8) that it would take judicial notice of pleadings and proceedings in the original lawsuit involved in that case.

In the case at bar, we have the same contract the subject-matter of the suit, in the same court, and the same parties, plaintiff and defendant, and the three cases are so closely interwoven and so clearly interdependent as to invoke the rule that the Court may take judicial notice in one suit of the proceedings in another suit; and in any event the Court may on the principle of stare decisis rightfully examine and consider the decisions of the former cases as affecting the consideration of this case.

POINT IV.

Since the substantive law applicable to this case is that of Iowa, the District Court and the Circuit Court of Appeals were required to follow the law of that State.

The law applicable was settled by the Supreme Court of Iowa in the case of *Lewis v. Minnesota Mutual Life Ins. Co.*, 240 Ia. 1249, 37 N. W. 2d 316, decided May 3, 1949 (same case 35 N. W. 2d 51).

The Supreme Court of Iowa in passing on that case was called upon to consider the effect of appointing plaintiff for life as agent of the defendant company and the right of termination of such contract by either party, and particularly whether the contract was unenforceable for lack of mutuality. In doing so, the Court reviewed the various cases previously decided by the Supreme Court of Iowa and other jurisdictions, including the U. S. Circuit Court of Appeals (8th Cir.) and followed and approved the holding in the case of *Faulkner v. Des Moines Drug Co.* (Iowa), 117 Ia. 120; 90 N. W. 585, *E. I. DuPont DeNemours Co. v. Claiborne-Reno Co.* (U. S. Cir. Ct. App. 8th Cir.), 64 F. 2d 224, *Terre Haute Brewing Co. v. Duggan* (C. C. A. 8 Cir. 102 F. 2d 425) and cases from other states, including Missouri, and held:

> "A contract will be construed to impose an obligation in perpetuity only when language of contract compels such construction.
>
> "Terms of contract must be complete and sufficiently definite to enable court to determine whether it has been performed and terms are not sufficiently definite unless court can determine therefrom the measure of damages in case of a breach.
>
> "An agreement appointing plaintiff for life as agent for life insurance Company, if established, would be no more than an indefinite general hiring terminable at will of either party, in absence of a consideration additional to services to be rendered by plaintiff.

"Where one party to a contract is not bound to perform it and cannot be held liable for failure of performance, there is a lack of 'mutuality' and contract is unenforceable.

"If mutual promises are the mutual consideration of a contract, each promise must be enforceable in order to render the other enforceable."

From the foregoing it is clear that the Circuit Court of appeals correctly interpreted and determined the law of Iowa to be that the agreement, arrangement, understanding or association which the petitioner claims in this suit is enforceable against the defendant (respondent) was not enforceable against the defendant because it was terminable at will.

POINTS V AND VI.

This Court has held several times that where lower Federal Courts are applying local law, the Supreme Court will not set aside their rulings except on the plain showing of error, and only in exceptional cases will the Supreme Court review the applying of local law by lower Federal Courts.

D. Del Vecchio v. Bowers, 296 U. S. 280, 285.

Palmer v. Hoffman, 318 U. S. 109.

District of Columbia v. Pace, 320 U. S. 698, 702.

Busby v. Electric Utilities Employees Union, 323 U. S. 72.

As to questions controlled by state law, conflict among Federal Circuit Courts of Appeal is not of itself a reason for granting a writ of certiorari.

In *Rublin v. N. Y. Life Ins. Co.*, 304 U. S. 202, it was held:

> "As to questions controlled by state law, conflict among Federal Circuit Courts of Appeal is not of itself a reason for granting a writ of certiorari by the Supreme Court of the United States, as the conflict may be merely corollary to a permissible difference of opinion in the state courts."

The Circuit Court of Appeals has not in this case "decided an important question of Federal law which has not been, but should be, settled by this Court." The question decided was one of substantive law of Iowa applicable to this case and which the Circuit Court of Appeals was required to follow, and the law of Iowa with respect to contracts of the type of that in suit conforms to the law which is generally applicable.

Meredith v. John Deere Plow Company of Moline, 8 Cir., 185 Fed. Rep. 2d 481.

POINT VII.

Writs of Certiorari, to review judgments of the Courts of Appeal, are only granted under special circumstances, and such jurisdiction should be sparingly exercised, and only in cases of peculiar gravity and general importance, or to secure uniformity of decisions.

Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U. S. 251, 257, 258.

State of Ohio ex rel Seney v. Swift & Co., 260 U. S. 146.

National Labor Relations Board v. Pittsburgh S. S. Co., 340 U. S. 498.

As pointed out by this Court in *National Labor Relations Board v. Pittsburgh S. S. Co.*, supra., Certiorari is granted only in cases involving principles, the settlement of which is of importance to the public as distinguished from the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between Courts of Appeal.

We submit that the case at bar is not one of peculiar gravity and general importance; the Circuit Court of Appeals has not in this case decided an important question of Federal law, which has not been, but should be, settled by this Court; it has not rendered a decision in conflict with another Court of Appeals on the same matter; it has determined that the law applicable is that of the State of Iowa, which it was obliged to follow; that in short the question involved was one of common law, which is not of great public interest. The Petitioner has presented no valid reason for the allowance of the writ of certiorari and it should be denied.

Respectfully submitted,

RAYMOND A. SMITH,
301-7 Park Building,
Council Bluffs, Iowa,
Attorney for Respondent.

OF COUNSEL:

ABEL V. SHOTWELL,
1032-42 Omaha Natl. Bank Bldg.,
Omaha, Nebraska.

L. D. WILSON and ROBERT L. BARRETT,
1325 Third Avenue,
Moline, Illinois.

APPENDIX A

(R11)

(Memorandum and Order of District Court sustaining Motion of Defendant to Dismiss and Dismissing Cause)

(Filed in U. S. District Court on August 7, 1956)

United States District Court
Southern District of Iowa
Western Division

M. M. Meredith, Plaintiff

vs.

John Deere Plow Co. of Moline, Ill., Defendant

This is the fourth action by the plaintiff against the defendant on the same general subject matter. The first was dismissed for failure of the complaint to state a claim upon which relief could be granted (89 Fed. Supp. 787) and that action was affirmed on appeal by the Eighth Circuit (185 F. 2nd 481). The second was, likewise, dismissed for failure of the complaint to state a claim upon which relief could be granted (the Federal District Court's opinion is unreported) and that action was again affirmed by the Eighth Circuit (206 F. 2nd 196). Certiorari was applied for and denied by the Supreme Court in each of those cases (341 U. S. 936 and 346 U. S. 223). The third complaint (No. 1-216 in the District Court for the Southern District of Iowa) involved the same subject matter and, after the overruling of the motion to remand to the State court from which removed, was dismissed by the plaintiff January 13, 1956.

This action, the fourth one, was commenced in the Southern District of Illinois, Northern Division, and, on motion of defendant under Section 1404 (a), Title 29, U. S. C., was transferred to this Court.

Defendant has filed a motion to dismiss for failure of the complaint to state a claim upon which relief can be granted, and a motion to strike the complaint as redundant and immaterial and violative of Rules 8 and 10 of the Federal Rules of Civil Procedure, and, in the alternative, a motion for a more definite statement. These are the matters now before the Court, which, as well as the briefs of the parties, have been fully considered.

Even without the fortification of the prior decisions, it is crystal clear that this complaint attempts, by way of assumption and conclusion, to allege a contract (and its breach) that is void and unenforceable for (1) uncertainty, (2) lack of mutuality, and (3) because expressly, as alleged, terminable at will. Hence, the complaint fails to state a claim upon which relief could be granted.

It Is Therefore Ordered By The Court, that defendant's motion to dismiss be, and is hereby, sustained and this action is dismissed. Done at Des Moines, Iowa, this 7th day of August, 1956.

CHARLES E. WHITTAKER,
United States Circuit Judge
(By Assignment)